

**From:** Chris Lee  
**To:** Microsoft ATR  
**Date:** 11/5/01 4:23pm  
**Subject:** Microsoft Wins at LOSING.....and THAT DOESN'T MAKE SENSE!

Are you folks settling for the public interest or for the interest of an ILLEGAL MONOPOLIST??? The settlement DOESN'T MAKE ANY SENSE! It's definite that the consumer and innovation is the BIG LOSER!!! A SELL OUT TO AN ILLEGAL MONOPOLIST THAT LOST IN THE COURT OF LAW IS NOT HOW ANTI-TRUST WORKS.....I think!

It's obvious, Geo. W. is paying back his Illegal Monopolist bud!

THANKS FOR NOTHING!!!!

November 5, 2001  
States balk at settlement proposal  
Joe Wilcox, CNET News.com  
The 18 state attorneys general who are co-plaintiffs in the Microsoft antitrust lawsuit are not expected to sign a settlement agreement--at least in its current form--hammered out between the software giant and the Justice Department, said sources familiar with the matter.

The Justice Department and Microsoft on Friday delivered the proposed settlement in the form of a consent decree to U.S. District Judge Colleen Kollar-Kotelly. But the states asked the judge for more time to review the settlement, which received little input from the attorneys general, said sources familiar with the negotiations.

Lawyers representing the states are scheduled to meet with Kollar-Kotelly at 6 a.m. PT Tuesday to deliberate the matter. During the status hearing, both sides are expected to discuss further proceedings under the Tunney Act. Under that law, a judge must review a settlement to ensure that it is in the public interest and was not politically motivated.

"The states are working intensively to review the settlement," Iowa Attorney General Tom Miller said Monday. "We will report to the judge on Tuesday."

In chambers on Friday, the judge reiterated her earlier view that settling the case would be in the best interests of the country.

The states appear to be deeply divided over how to proceed with the case, in light of the judge's instructions, possible resistance from the Justice Department and the resources that likely will be required to continue the nearly four-year-old antitrust battle, sources said. The states largely focused their attention on numerous apparent loopholes in the consent decree and the limited scope of the agreement.

"In antitrust doctrine, there is this concept of fencing in the monopolist," said Jonathan Jacobson, an antitrust lawyer with Akin Gump Strauss Hauer & Feld in New York. "You fence them in so that they don't repeat the same behavior. I don't see that's here" in the consent decree.

Antitrust law demands that "remedies should be forward looking," said Emmett Stanton, an antitrust attorney with Fenwick & West in Palo Alto, Calif. "That doesn't appear to be the case here."

The proposed consent decree would compel Microsoft to reveal some Windows XP code to make it easier for third-party software to work with the operating system, and make some concessions regarding PC makers. But it steers clear of emerging technologies such as digital rights management and Internet authentication.

A "get-out-of-jail-free card"

The states appeared most worried about possible loopholes that might empower Microsoft rather than restrain its monopoly muscle.

Bob Lande, an antitrust professor at the University of Baltimore Law School, pointed to the 22-page agreement's definition of an operating system and its lack of restrictions on Microsoft's bundling in more features.

"They should be concerned about this," Lande said.

"The agreement says Microsoft can tie (products to Windows) because they can define the operating system any way they want," Lande said. "So conceivably, Microsoft could tie a ham sandwich to the operating system."

One of the case's core issues was the integration of Microsoft's Internet Explorer Web browser into Windows 95 and 98. "Contractual tying has not really been addressed" in the proposed settlement, Stanton said.

Referring to the board game Monopoly, Lande described many provisions of the proposed settlement as a "get-out-of-jail-free card."

States also are deliberating what role a three-person technical committee would legitimately have to enforce the consent decree. Microsoft apparently considers the committee and its power to regulate the company as a tremendous compromise, said sources familiar with the matter.

If the states sign the settlement, however, the company could announce a compliance officer for enforcing the agreement as early as this week.

The states have gotten an earful from Microsoft competitors, which in recent weeks have complained of a cold reception at the Justice Department. Under the Clinton administration, Joel Klein, assistant attorney general at the time, openly solicited feedback from Microsoft competitors Oracle and Sun Microsystems. Some Microsoft competitors had expected similar openness from current Assistant Attorney General Charles James, whose former firm, Jones Day, represented Microsoft rival AOL Time Warner. But with the exception of the media giant, James reportedly did not meet directly with Microsoft competitors, choosing to send subordinates instead, said sources familiar with the dialogues.

The attorneys general are expected to continue their discussions Monday, as they hammer out a strategy that some sources indicated might not be unified. Some states were leaning toward going along with the settlement, while others wanted to push ahead without the Justice Department, sources said. The states could also ask for modifications to the agreement.

California and Massachusetts are among the five or six states most resistant to the proposed consent decree, at least in its current form. Should California go along with the settlement, much of the coalition would likely follow, said sources familiar with the situation.

Also involved are Connecticut, Florida, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Minnesota, New York, North Carolina, Ohio, Utah, West Virginia, Wisconsin and the District of Columbia. In July, New Mexico settled independently with Microsoft.

Concerns about the judge

The states are gravely concerned about Kollar-Kotelly, who is a newcomer to the case, particularly in light of her desire to see the case settled, sources said. In August, Kollar-Kotelly was randomly assigned to the case to replace U.S. District Judge Thomas Penfield Jackson.

Lande warned that the states should not take lightly Kollar-Kotelly's comments about striving for a swift settlement.

"You have this judge who doesn't know the facts of the case, doesn't know the games that Microsoft plays and maybe really doesn't want to get into the facts," he said.

If none, or only some, of the states sign the agreement, the original schedule set by Kollar-Kotelly would continue. The non-agreeing parties would file their proposed remedy by Dec. 7, with Microsoft responding by Dec. 12. A remedy hearing is tentatively scheduled for early March.

This could put the court in the position of overseeing two different sets of activities in the case: concluding the settlement by the process established by the Tunney Act, and preparing for a separate remedy hearing.

Before Kollar-Kotelly holds the Tunney Act hearing, there must be a 60-day period of public comment,

in part to ensure that the agreement is in the public interest. Under the terms of the proposed deal, the Justice Department is to publish the proposed settlement in the Federal Register on or before Nov. 16. The Justice Department also "will publish a notice informing the public of the proposed Final Judgment and public comment period in the Washington Post and the San Jose Mercury News, for seven days over a period of two weeks commencing no later than November 15, 2001," the consent decree states. Within 30 days after the close of the period for public comment, the Justice Department must publish its response in the Federal Register.

-----  
Do You Yahoo!?

Find a job, post your resume on Yahoo! Careers.